

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**





76-7557

6-7557 & 7572 & 7589

To be argued by  
ROBERT G. SULLIVAN

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UNITED STATES COURT OF APPEALS

For the Second Circuit

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ANTHONY PEREZ, Jr.,

Plaintiff-Appellant-Appellee,

-against-

MUHAMMAD ALI a/k/a Cassius Clay,

Defendant and Third Party  
Plaintiff-Appellee-Appellant,

-and-

AMERICAN BROADCASTING COMPANIES, INC.  
and ABC SPORTS, INC.,

Third Party Defendants-  
Appellees-Appellants.

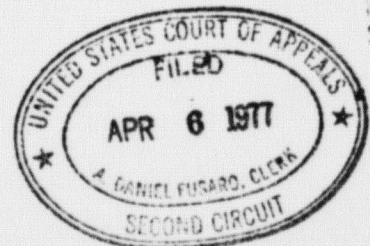
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REPLY BRIEF OF PLAINTIFF-APPELLANT-APPELLEE

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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ANTHONY PEREZ, JR.,

Plaintiff-Appellant-Appellee, Docket Nos.  
76-7557  
76-7572  
76-7589

-against-

MUHAMMAD ALI, a/k/a CASSIUS CLAY,

Defendant and Third-Party  
Plaintiff-Appellee-Appellant,

-against-

AMERICAN BROADCASTING COMPANIES, INC.  
and ABC SPORTS, INC.,

Third-Party Defendants-  
Appellees-Appellants.

-----x  
REPLY BRIEF OF PLAINTIFF-APPELLANT-  
APPELLEE, ANTHONY PEREZ, JR.

PRELIMINARY STATEMENT

Ali's brief contains many factual misrepresentations, supported by miscitations and highly selective quotations from the record, all calculated to obfuscate the issues raised by plaintiff Perez in his main brief.

Notwithstanding Ali's efforts to befog and muddle, Ali's brief is most noteworthy, however, for its explicit concession of many of the errors complained of by Perez and its silent acknowledgement of several others.

## ARGUMENT

### (I)

Rather belatedly, Ali's counsel now concedes that Ali's press conference remarks were introduced in evidence and that the videotape of his verbal blast at Perez, marked Plaintiff's Exhibit 4, was played for the jury and the Trial Court, as indicated at the very place in the record cited to the Trial Court by plaintiff's trial counsel when he endeavored to have the Court below correct its erroneous recitation of the "undisputed chronological sequence of events" which gave rise to this litigation in its charge (Ali's brief, p.10, 655-657). (EMPHASIS ADDED) Ali now further concedes that Plaintiff's Exhibit 4 is a videotape of his remarks at the press conference just as plaintiff's trial counsel advised the Court below who mistakenly insisted that Plaintiff's Exhibit 4 was a tape of the Frazier-Ali fight (655-656).

Ali's appellate counsel makes these concessions from a review of the record without any of the apparent difficulty or great confusion which Ali's trial counsel had when the Court below looked to him for confirmation of the accuracy of its recollection of the facts and history set forth in its charge. Parenthetically, Ali's trial counsel, who is no longer associated with the firm representing defendant Ali, was present throughout the course of the trial and had ordered and received daily copy of the trial minutes. In fact, the Court gave plaintiff's trial counsel its copy of the transcript which Mr. Ali had ordered and instructed him to find the passage which indicated that such a press conference tape was played (652-657).



Ali attempts to overcome the gravity and significance of its concession regarding the Trial Court's erroneous exclusion of Ali's press conference remarks from the jury's consideration by repeatedly criticizing plaintiff's trial attorney for not producing the tape or doing anything to end the apparent confusion (Ali's brief, pp. 22, 25; 26-27). This criticism is unfair, untrue and grossly misrepresents the record which reflects the persistent efforts of plaintiff's trial counsel to refresh the Court's recollection so that the charge could be corrected.

\* \* \*

"MR. SULLIVAN: May I try to refresh your Honor's recollection?" (656)

\* \* \*

"MR. SULLIVAN: Your Honor, I will try to find it.

THE COURT: You better do better than try to find it. You better find it or withdraw your statement.

MR. SULLIVAN: I would like to state, your Honor, that --" (653)

\* \* \*

"MR. SULLIVAN: Your Honor, I point to page 243 of the testimony on October 13, 1976. I state that it really starts on page 22 -- line 22, I'm sorry".

\* \* \*

"MR. SULLIVAN: Your Honor, that doesn't say the Frazier fight, I don't think. I am not trying to divert. I think it says as to the tape that the jury just saw. They are



not talking about the Frazier fight there. They are talking about the taped conference which apparently wasn't taken down by the reporter." (655)

\* \* \*

"MR. SULLIVAN: It is a continuation on 244 where it shows that the exhibit we are talking about now is Exhibit 4, the Frazier fight was Exhibit 2. I am not talking about --" (656)

\* \* \*

"MR. SULLIVAN: Yes, your Honor, from pages 242 through 247, it becomes clear that what was played was the tape of Muhammed Ali right after Perez. Of that interview, the tape was played. I individually remember it clearly, and I request your Honor's permission to go and get Exhibit 4 and try to find it because --

THE COURT: Mr. Sullivan, several times during the trial you tried to divert the proceedings by rushing off to have something played. Well, let it stand as it is. There is no taped record of any interview of Ali with the press on March 24, 1975 in this case. Your statement to me was that I failed, in reciting the chronology, to mention an interview on March 24th immediately after the fight. There is nothing in words in the record on that subject, and there is nothing in pictures on that subject ..."

(660)

\* \* \*

The sheer audacity which permits Mr. Ali to criticize plaintiff's trial counsel for not attempting to correct the confusion when the record unequivocally contradicts such a conclusion



also permits Mr. Ali to make the equally false statement that while the Trial Justice may have omitted reference to the tape in its "one and one-half page summary of the evidence" (Ali's brief, p. 25), it nevertheless referred to these press conference remarks by Ali in its charge, citing page 629 of the trial transcript.

This latter statement is a flagrant misstatement of the record for at page 629, it is clear that the Trial Court is merely reading from Mr. Perez' pleading, which includes the following brief statement:

\* \* \*

"'Defendant Muhammed Ali stated subsequent to the Ali-Wepner fight that he would see to it that plaintiff was prevented from refereeing additional heavyweight boxing matches and would preach - as he has done - a sermon of hate throughout the world against the plaintiff Perez herein.'" (629)

\* \* \*

The Court below immediately thereafter again repeats its analysis of the undisputed chronological sequence of events which it had previously given to the jury, again omitting reference to Ali's press conference remarks:

\* \* \*

"Following the Perez statements to the press of March 24 and 25, and to Cosell on March 28, Mr. Ali was interviewed for television by Howard Cosell in connection with the Perez statements, the Ali-Wepner fight and the events of the 1974 Frazier fight. Mr. Perez was the referee in both the 1974 Frazier and



in the 1975 Wepner fight." \* \*

Hence, the Trial Court compounded its error by repetition so that assuming arguendo that plaintiff's complaint as read to the jury specifically included all of Ali's verbatim press conference remarks, the Trial Court nevertheless again excluded all of these remarks from the jury's consideration.

Defendant Ali mistakenly relies upon the alleged brevity of the Court's summary of the evidence as supportive of his contention that the omission was not critical. Yet, it is submitted that the very brevity of the Court's summary underscores the importance and effect of the Court's omission especially when the Court below gave to the jury what it characterized as the undisputed chronological sequence of events.

Imagine the effect of such omission upon the jury. Surely when the Trial Court instructs the jury that its brief statement reflects the undisputed chronological sequence of events which they are to consider, the jury must conclude that the omission of Ali's press conference remarks was deliberate. Moreover, the record as quoted at pages 34-38 of Perez' main brief discloses that there was some confusion surrounding the introduction of Ali's press conference statements into evidence both before and

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\* The paragraph quoted above from plaintiff's complaint does not specifically refer to the press conference remarks of Ali nor does it in any way reflect the lengthy vituperative attack which Ali made upon Perez.



after its admission so that the jury could have easily concluded from the Trial Court's omission of this evidence in its sequence of events that the tape's contents were now being deliberately excluded from its final consideration.

Even if the Trial Justice had not used the word "undisputed" in its marshalling of the evidence, the mere failure to include reference to the remarks make them appear inconsequential to the Court's analysis of the evidence for the brevity of the analysis underscores the importance of the particular evidentiary matters selected by the Court for inclusion and discussion in its charge.

Ali tries to claim that there was no prejudice as a result of the Trial Court's omission of this evidence in its charge, asserting that "the jury did hear the testimony, see the tape and considered it along with all of the other evidence" presented by Perez on malice (Ali's brief, p. 28). Plaintiff contends that the Trial Court's "undisputed chronological sequence of events" precluded such consideration by the jury, but it is submitted that the Court's distorted analysis at the very least raises a serious question as to what the jury considered. Certainly, there is no basis for concluding as Ali does in his brief that the jury considered his press conference remarks along with Perez' other evidence of his malice (28).

(II)

Ali is wholly unable to deal with any of the points made by Perez regarding the Trial Court's alleged failure to impartially preside over the trial and to fairly deal with the



litigants and their counsel. Indeed, Ali blatantly resorts to distortions and misrepresentations of the record in his efforts to refute plaintiff's contentions in this regard.

Ali, for example, inaccurately asserts that plaintiff never requested that Ali be returned to the stand for further examination following the Trial Court's admission of Ali's autobiography. (Ali's brief, p.33) The record reveals the falsity of this statement:

"THE COURT: I said what do you want to do now.

MR. SULLIVAN: Put him back on and impeach him." (472)

\* \* \*

With respect to the Trial Court's refusal to allow plaintiff to introduce the photograph of Ali with his arm around Perez' girlfriend into evidence taken on the day before the Wepner fight, defendant Ali argues that this was a collateral matter, of no probative value. (Ali's brief, p. 21) Ali denied knowing that Perez was to referee the Wepner fight until he climbed into the ring and, therefore, didn't object to Perez' selection notwithstanding his alleged corrupt performance in the Frazier fight. Defendant speciously argues that the photograph in no way reflected upon Ali's credibility since many referees are present on the day before a championship fight and many people have their photograph taken with Ali. It is submitted that not many New York referees were in Ohio where the Wepner fight occurred. Tony Perez was there because his selection as referee had been announced to the world on the day before the fight -- an announcement which incredibly the defendant never heard.

Ali's silence as to plaintiff's complaint regarding the Trial Court's interjection during his cross-examination relating to Wepner's knockdown of Ali constitutes an acknowledgement by Ali of the impropriety of the Trial Court's conduct. (204) Although Perez' main appellant's brief is replete with references to the Trial Court's biased conduct and comments, defendant Ali specifically deals with very few of them, thus revealing his obvious inability to do so.

Similarly, Ali's inability to refute plaintiff's contentions with regard to the Trial Court's placement of improper restrictions on plaintiff's examination of Ali provides further evidence of the accuracy of plaintiff's complaints.

It is submitted that plaintiff's right to a new trial - a fair hearing in an unbiased and impartial atmosphere - is so clear especially in view of defendant's inability to refute any of the issues and points raised upon this appeal by plaintiff.

Plaintiff bore the extraordinary burden of establishing liability with clear and convincing proof of malice. Defendant doesn't sufficiently overcome plaintiff's proof that the Court actively interfered and unduly restrained plaintiff's examination of Ali. As the Court so wisely pointed out:

\* \* \*

"...Is it collateral to know what the witness' statements and intentions were at the time? Isn't the state of mind of the witness a subject for the jury to resolve as a question of fact?

In order to determine whether or not there was, what the law calls, actual malice, you have to take the straws in the wind to see whether -- which way the wind blows and whether it adds up to the tornado that the examiner seeks to create. . ." (363)

\* \* \*



Unfortunately, the restrictions placed by the Court upon Ali's examination did not reflect the aforequoted analysis.

(III)

The Court below's refusal to submit Ali's second and third counterclaims to the jury insofar as they included a claim for damages for physical injuries allegedly suffered by Ali in his fight with Chuck Wepner as a result of Perez' alleged intentional and malicious refusal to perform his referee duties and his breach of his contractual obligation to Ali was entirely proper.

Ali did not even except to the Trial Court's ruling in this regard quoted below:

\* \* \*

"Secondly, so far as the claims for physical damage are concerned and to clarify my rulings dismissing the second and third counterclaims of Ali against Perez without prejudice and allowing the damages claimed to be considered as part of the first counterclaim, I note that there is an intertwining of defamation damages with physical damages. The physical damages are referred to in paragraphs 35 of the second counterclaim and 42 of the third counterclaim, and those paragraphs are stricken out.

The jury will be advised that the elements of damages to Mr. Ali allowable in this particular case may not include any recovery for physical injuries he may have suffered, but that the only elements of damages that may be considered in respect to either complainant would be for defamation, namely, damage to reputation, humiliation and mental anguish. This does not preclude

mention by counsel to the jury of the physical contacts which occurred in the fights as bearing on the acts and statements of the parties and the knowledge thereof by Mr. Perez."

\* \* \*

Ali offered no independent medical proof to support his claim that he had suffered physical injury to his kidney in the Wepner fight. More importantly, he conceded at trial that he was unable to state that his alleged kidney trouble, which necessitated his use of the bathroom every 15 minutes, was attributable to any injuries received in the Wepner fight. (392) Moreover, at his examination before trial, Ali testified that his doctor had informed him that he could have developed weak kidneys from his boxing experiences "over the years". (395)

Notwithstanding Ali's claim of serious injury, he fought Ron Lyle six weeks after the Wepner fight and began vigorous training for the Lyle fight within a few weeks after the Wepner fight. (395-396) Dundee, who as Ali's trainer, was concerned with his physical condition, denied any awareness of Ali's alleged kidney problem. (441-445) He could not recall Ali ever having to take frequent breaks during training to use the bathroom. (441-442)

To allow the jury to consider Ali's claim of personal injury in view of the evidence adduced would have allowed the jury to engage in wild speculation as to whether Mr. Ali's claimed

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At trial, plaintiff's attorney noted that Ali had continuously sat in the courtroom for hours without ever leaving to use the men's room. (393)



injuries were causally connected to the blows he allegedly received in the Wepner fight.

Mr. Ali makes a living, albeit a good one, from not only giving but also receiving body punches and blows. He fought many fights with much more powerful and able boxers before he encountered Chuck Wepner. Ali's own inability to state with any degree of certainty that his kidney problem was precipitated by injuries received in the Wepner fight, assuming arguendo he was qualified to make such statement, when coupled with his failure to produce any medical testimony and his admission that his own personal physician was unable to associate the injuries with the Wepner fight precluded the Court's submission of this claim for damages to the jury. Ali's trial counsel implicitly recognized the correctness of the Court's ruling by failing to except to same.

After the elimination of Ali's claim for damages for physical injuries in the second and third counterclaim, the remaining damages sought relate solely to Ali's allegedly damaged reputation as the Heavyweight Boxing Champion of the World (see paragraphs #36 and #43 of Second and Third counterclaim [20a-21a]). Hence, the Trial Court's decision to allow the jury to consider the elements alleged as damages within the scope of the first counterclaim for defamation caused no actual prejudice to Ali, assuming for the sake of argument but not conceding that the Trial Court's refusal to separately submit the second and third counterclaims was erroneous.

CONCLUSION

A new trial as to plaintiff's claim for compensatory and punitive damages sustained as a result of Ali's defamatory attack upon him must be ordered in view of the Trial Court's concededly erroneous charge to the jury which inaccurately and distortedly marshalled the evidence to the prejudice of plaintiff denying him a fair trial. A new trial is also mandated herein by reason of the Court below's conduct and comments at the trial which unfairly evidenced his view of the case.

Respectfully submitted,

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